

BakerHostetler

Baker&Hostetler LLP

Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5403

T 202.861.1500
F 202.861.1783
www.bakerlaw.com

June 23, 2021

Erika K. Thomas
direct dial: 202.861.1675
ekthomas@bakerlaw.com

VIA ECF

The Honorable Cecelia G. Morris, Chief Judge
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 627
New York, NY 10004-1408

Re: Picard v. Fairfield Investment Fund Ltd., et al., Adv. Pro. No. 09-01239 (CGM)

Dear Chief Judge Morris:

We are counsel to Irving H. Picard, Trustee, the plaintiff in the above-referenced action. This letter is submitted to respond and object to the June 22, 2021 letter and 121 pages of exhibits improperly submitted to the Court by counsel for certain defendants in this action.

The defendants' letter should not be considered at all, as it was submitted outside of the Court's permitted briefing on defendants' motion to dismiss. As the Trustee has extensively briefed and argued, the Court should not entertain defendants' invitation to decide their pending motion based on competing inferences drawn from selected exhibits. The choice between two plausible inferences that may be drawn from factual allegations is not a choice to be made on a motion to dismiss. The fact that the defendants need to rely on factual arguments outside the four corners of the Trustee's Second Amended Complaint further supports the Trustee's contention that their motion to dismiss must be denied.

We felt compelled to respond for the reasons noted above, and apologize to the Court for the submission of an additional letter on this matter.

Respectfully submitted,

/s/ Erika Thomas

Erika Thomas
Counsel